

E-FILED on 3/20/13

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CUC DANG,

Plaintiff,

v.

SUTTER'S PLACE, INC. dba BAY 101 or  
BAY 101 CASINO, UNITE HERE! LOCAL  
19, and DOES 1 through 20, inclusive,

Defendants.

No. C-10-02181 RMW

**RULINGS ON PLAINTIFF'S OFFER OF  
DEPOSITION AND DISCOVERY  
RESPONSES AS EVIDENCE**

**Re: Dkt. No. 120**

The court GRANTS plaintiff's request to offer defendant Bay 101's Responses to Plaintiff's Special Interrogatories Nos. 1-3 as evidence at trial. Defendant Bay 101 does not object to the these proposed discovery responses.

The court DENIES plaintiff's request to offer the excerpts from the deposition transcript of Suping Zeng ("Zeng") at trial. Zeng is not a party to the litigation, so her deposition is not generally admissible under Federal Rule of Civil Procedure ("Rule") 32(a)(3). Zeng's deposition is admissible under Rule 32(a)(4) only if plaintiff (A) is dead, (B) is located more than 100 miles away, (C) is too old or ill to testify or is imprisoned, (D) if Zeng's attendance cannot be procured by subpoena, or (E) if on motion and notice, exceptional circumstances are shown. In this case, Zeng's restaurant is located in San Jose, California, Zeng recently appeared for her deposition, and plaintiff

1 makes no allegation that Zeng is otherwise located more than 100 miles away or unavailable to  
2 testify under any other exception in Rule 32(a)(4). Accordingly, the court denies plaintiff's request to  
3 offer her deposition testimony at trial in lieu of her presence.

4  
5 DATED: March 20, 2013

  
RONALD M. WHYTE

United States District Judge

United States District Court  
For the Northern District of California